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SUBJECT: CRIMINAL TRIAL PROCEDURES REFORM STALLED

REF: A. 04 Hanoi 1667 B. 03 Hanoi 2074

1. (SBU) Summary: Vietnam's efforts to introduce American-style "adversarial" courtroom procedures have stalled and the long standing problem of "tailored sentencing," sentences decided through consultations among judges before a trial takes place, is still prevalent. The GVN has not yet issued the necessary instructions to guide the implementation of amendments to the Criminal Procedures Code that allow for American adversarial litigation. Aside from easing restrictions on the amount of time lawyers are allowed to address the court, there have been no major changes to the existing system of French-style "investigative" courtroom procedures. However, the passage of the amended Code has contributed to raising public awareness about citizens' basic rights. The Politburo has reportedly adopted a long-term plan on judicial tasks that would give courts more power. End Summary.

Criminal Litigation Reform Yields Few Concrete Results

2. (SBU) Ngo Cuong, Editor-in-Chief of the Supreme People's Court (SPC) Judicial Affairs Journal, told PolFSN that, although the CPV Secretariat issued in 2002 a resolution on "urgent judicial tasks" that encouraged a move toward adversarial litigation, there have been no further studies on an introduction of this new style of litigation. As a result, Vietnam retains its long-standing system of French-style "investigative" courtroom procedures -- in which the judge leads the questioning of the witness. The amended Criminal Procedures Code that took effect July 2004 contains "nice words" about adversarial litigation, but the GVN has not issued any other instructions or guidance for legal bodies on the necessary changes to the way they should carry out their duties. The revised Code theoretically allows for defense lawyers to collect evidence, but it does not provide specifically for how they can do this. The lack of guidance on the involvement of defense lawyers during the investigative process increases the likelihood that the court's panel of judges could be overly influenced by the police and the prosecutor, Cuong suggested.

3. (SBU) Cuong, himself a Deputy Department Director for Judicial Studies at the SPC, confirmed that judges still generally act in a "traditionally safe manner." They tend to issue "tailored sentences" agreed upon among the judges in charge of a case based solely on the information included in the police investigation, or based on discussions between the bench and the prosecutors in more complicated cases. There are exceptions in which defense lawyers prove to be "exceptionally persuasive," however. In these cases, the judgment panel calls on the investigators to conduct additional investigations, instead of releasing the accused, due to "lack of evidence." By doing so, the judgment panel, which includes at least one judge and two lay assessors, is essentially on the "same side" as the prosecutor, which "violates basic rules," Cuong asserted. He attributed this tendency to the lack of life-long judge appointments, which leads to the dependency of judges on court officials who control judicial re-appointments, conducted every five years.

4. (SBU) Echoing Cuong's comments, Pham Hong Hai, one of the country's most well-known lawyers and a former senior staff member of the State and Law Institute, asserted that the biggest obstacle to the actualization of an adversarial style of litigation in Vietnam is the common practice in which judges consult with court officials to reach a "consensus" on possible sentences before a trial takes place. The only good thing about the amended Criminal Procedures Code is that lawyers now have fewer time restrictions on them when they address the court, he articulated.

Red Tape Constricts Defense Counsel

5. (SBU) Hai criticized law enforcement agencies, namely investigative offices, for their unfavorable treatment of defense lawyers. Defense lawyers often have to wait a long time before receiving a "certificate" from the investigation

office that would (in theory) allow them access to the charged. Acquiring this certificate requires them to present a number of documents, including copies of their licenses, introductory letters from the law office they work for and copies of labor contracts with the law office. In many cases, there is a Catch-22: defense lawyers must present documents from the charged requesting them as counsel, but in order to receive such a document, the defense attorney has to meet with the charged. Previously, defense lawyers only had to present a letter of introduction from the law office, together with a request in writing from the family of the charged. "It does not seem right that we now have many more requirements and much more paperwork", Hai grumbled.

16. (SBU) Another obstacle to a more adversarial system is the general unwillingness of investigators to help by granting defense attorneys access to case dossiers. Hai complained that lawyers often have a hard time getting "access" to investigators, who "always claim to be physically out of the office." Making copies of documents is also a problem, because in many cases, court staffers can refuse to help by citing the unavailability of photocopiers, or simply saying, "we are too busy," Hai claimed.

17. (SBU) Ngo Huy Cuong, a lecturer in the Law Faculty of Hanoi National University, claimed that the quality of investigators and prosecutors is a great concern. Prosecutors often fail to successfully present their cases in court, while only 50 percent of investigators have college degrees. Cuong believes that the trend of judges' basing their sentences almost exclusively on investigation results -- rather than on an "adversarial litigation" style -- has caused the high number of judicial mistakes in Vietnam, namely wrongful prosecutions and sentences.

Courts to Have More Power -----

18. (SBU) According to Ngo Cuong, the Politburo just passed a classified resolution on strategic tasks in the area of judicial reform in Vietnam for the years 2006-2020. The resolution requires further revisions to the existing Criminal Procedures Code as well as the Civil Procedures Code. Those amendments are apparently designed to better protect citizens' rights (as opposed to the rights of judicial agencies) and facilitate Vietnam's entry into the WTO. It stresses the necessity of having more qualified judicial workers, especially lawyers. Studies will be undertaken on changes to the current judicial system, such as creating a more significant role for the courts. The courts may be given control over the investigation process, while the Procuracy could well become a Prosecutor's Office under the Government. The resolution makes clear, however, that no possible changes with regard to the Procuracy would take place before 2010.

19. (U) The Politburo's resolution stresses the strengthening of the Party's leadership over the judicial system. It specifically requires that presiding judges of People's Courts at all levels to be standing members of Party's Committees at the same level. In other words, the Presiding Judge of the Supreme People's Court would need to be in the Politburo or at least a member of the Secretariat.

110. (SBU) Ngo Cuong, who is rumored to be a close confidante of Nguyen Van Hien, current SPC Presiding Judge, said Hien, a member of the CPV Central Committee who has the rank of Deputy Prime Minister, has discreetly showed his discomfort over the current limited power of the courts. Hien reportedly compared the Party to a big conical hat that overshadows a small bowl representing the National Assembly, which in turn overshadows a small dot, the courts, and said "such a thing is truly irrational."

111. (U) Comment: Vietnam's inability to follow through on its intention to create a more adversarial litigation style is reflective of the difficulties in overcoming the courtroom traditions established by the French. At least the passage of the amended Criminal Procedures Code in 2003 has contributed some to raising public awareness about citizens' rights while seemingly sending a message to law enforcement agencies about the need to correct the current widespread problems of police abuse and judicial mistakes. In one case, this prompted a National Assembly Standing Committee to offer compensation to victims of judicial mistakes (ref. B). End comment.

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